IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.69 OF 2004
AND
CRIMINAL APPLICATION NO.1090 OF 2005

The State of Maharashtra ..Applicant

V/s.

Kamlesh Damji Shaha ..Respondent

Mrs.P.H.Kantharia, Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 22.02.2005.

PC

. Heard the learned Addl.Public prosecutor for the applicant/State.

2. The present respondent faced trial for the offence punishable under Section 394 of IPC in Sessions case No.474/2001 before the Court of Adhoc Addl.Sessions Judte, Thane. The trial Judge by his Judgment dated 13.6.2003 held that accused/respondent was responsible for the offences punishable under Sections 393 and 324 of IPC. However, the present respondent was acquitted under Section 394 of IPC. Aggrieved by the Judgment of acquittal the State presented Criminal appeal (now converted into Criminal Application for leave to

appeal) on 6.1.2004. By Criminal application No.69/2004 the State prays for condonation of delay in filing Criminal appeal (now Criminal Application for leave to appeal).

3. On 19.1.2004 the Division bench ordered issuance of notice to the respondent on the application for delay. We find from the proceedings that the notice was issued to the respondent way back in the month of April-2004. Although reminders were issued on various occasions, notice issued to the respondent has not received as served or un-served. In the circumstances, we deem it fit to consider whether there is any merit in challenge to the respondent's acquittal for the offence under Section 394 of IPC. The learned Addl.Public Prosecutor could not show from the available material that there was any robbery committed by the accused. When there is no evidence to suggest that robbery was committed by the respondent on the highway, question of the respondent having committed offence under Section 394 of IPC of voluntarily causing hurt in committing robbery does not arise. On the basis of the evidence on record the trial Judge held that there was an attempt to commit robbery and accordingly, the accused has been convicted for the offence punishable under Section 393 of IPC and in the light of the hurt caused on the person of Ranjraj the trial Court convicted the accused/respondent under

Section 324 of IPC. To complete narration as a matter of record, we may notice here that the State has preferred Criminal Appeal being Criminal Appeal No.1142/2003 for enhancement of sentence in so far as conviction of the accused under Section 393 is concerned, and by our order dated 4.2.2005, the said appeal has been admitted. However, coming back to the present Criminal application for leave to appeal against the acquittal of the respondent for the offence punishable under Section 394 of IPC, we find that there is nothing on record on the basis of which it could be held that the accused/respondent committed robbery on the highway and while doing so caused hurt. As a matter of fact as noticed, commission of robbery is not established.

4. Since we have considered the Criminal application for leave to appeal on merits, the aspect of condonation of delay has no significance.

5. Criminal Application No.69 of 2004 and Criminal Application No.1090 of 2005 (for leave to appeal) are disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)